

**MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA,
ACTING BY AND THROUGH THE
GENERAL SERVICES ADMINISTRATION
AND
KANSAS STATEWIDE PROJECTS DEVELOPMENT CORPORATION
FOR THE CONVEYANCE OF LAND AND PROPERTY
COMPRISING THE
FORMER SUNFLOWER ARMY AMMUNITION PLANT
JOHNSON COUNTY, KANSAS**

USE AND DISCLOSURE OF DATA

The data in this proposal shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the proposal; provided, that if a contract is awarded to this offeror as a result of or in connection with the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the contract. This restriction does not limit the Government's right to use information contained in the data if it is obtainable from another source without restriction. The data subject to this restriction are contained in Pages 1-__, and Exhibits ____.

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LIST OF EXHIBITS

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SUNFLOWER ARMY AMMUNITION PLANT
JOHNSON COUNTY, KANSAS**

THIS MEMORANDUM OF AGREEMENT is made as of the _____ day of _____, 2000 by and between the **United States of America**, acting by and through the General Services Administration and pursuant to authority of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377, 40 U.S.C. §§ 471, et seq.), as amended, and the rules, orders, and regulations issued pursuant thereto and the Kansas Statewide Projects Development Corporation, an instrumentality of the State of Kansas and a subsidiary of the Kansas Development Finance Authority, created pursuant to Kansas Statutes Annotated, Section 74-8904(v), as amended.

RECITALS

WHEREAS:

The Government is the owner of certain real property, improvements and other rights appurtenant thereto together with all Related Personal Property hereinafter described, located in Johnson County, Kansas, and commonly referred to as the former Sunflower Army Ammunition Plant.

The Department of the Army has determined that it no longer needs Sunflower and has reported Sunflower to GSA as being in excess to the needs of the Army.

GSA has determined that Sunflower (as hereinafter defined) is available for disposal as surplus to the needs of the United States and has agreed to convey substantially all of Sunflower to the KSPDC, at its fair market value, for economic redevelopment purposes under the authority of 40 U.S.C. § 484(e)(3)(H) pursuant to the Conveyance Agreement;

OEC, a corporation duly formed under the laws of the State of Delaware, has agreed to assume all obligations of the KSPDC to GSA with respect to GSA's conveyance of Sunflower to the KSPDC;

OEC has agreed to remediate Sunflower, and to ensure completion of all remedial action, has: (1) entered into the Consent Order with the KDHE which obligates OEC to complete the remediation pursuant to KDHE's orders; (2) engaged a remediation contractor to perform the remediation ordered by KDHE; (3) purchased environmental insurance and a surety bond to provide financial assurances that the KDHE ordered remediation will be completed; (4)

purchased a payment bond to ensure payment to the remediation contractor and a performance bond to ensure said contractor's performance; and (5) created an irrevocable trust to ensure the completion of the environmental remediation required by KDHE in the event that OEC is unable to complete the remediation;

The Army recognizes and acknowledges that it is ultimately responsible for the environmental remediation of contamination it caused at Sunflower to levels adequate to ensure protection of human health and environment irrespective of OEC's contractual obligations;

The completion of the parties' obligations under the Army Agreement will result in the fulfillment of the requirements necessary for the Army to grant the CERCLA Section 120(h)(3)(A)(ii) covenant for Sunflower;

The Army and OEC have entered into the Army Agreement, which reflects the agreement of the parties with respect to their undertaking specified corrective action of Sunflower and all matters related thereto:

In accordance with the Federal Property and Administrative Act of 1949, 40 U.S.C. Section 484(e)(3)(H), as amended, and the early transfer authority provided under Section 120(h)(3)(C), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, and the rules, orders, and regulations issued pursuant thereto, the Government desires to convey and KSPDC desires to acquire Sunflower consisting of approximately nine thousand sixty-five (9,065) acres of land subject to the terms and conditions set forth herein.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing premises and the respective representations, agreements, covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Government and KSPDC agree as follows:

ARTICLE 1. DEFINITIONS

When used herein, the following terms shall have the respective meanings set forth opposite each such term:

1.1. Alliant. Alliant TechSystems, Inc., successor to Hercules Aerospace Company, the current Government contractor operating Sunflower pursuant to a facility use contract with the Army.

1.2. AREP. The Army retained environmental program, as more fully described in Exhibit 1.

1.3. AREP Closing(s). One or more Closings at which the AREP Property is transferred by the Government to KSPDC.

1.4. AREP Property. Those Tracts required to be retained by the Army to carryout the AREP. A map generally describing this real estate is attached as Exhibit 2. The specific Tracts included within the AREP Property will not be determined until the Second Closing.

1.5. Army. The United States Army.

1.6. Army Agreement. The agreement between the Army and OEC regarding the Remediation of portions of Sunflower, to be executed on or before the date of the First Closing, in the form attached hereto as Exhibit 3, together with any supplements or amendments thereto.

1.7. Bill of Sale. A bill of sale in the form of Exhibit 4.

1.8. Claims. Any and all losses, costs, liabilities, judgments, claims, proceedings, demands, actions, fines, penalties, expenses, damages, or other fees.

1.9. Classification Agreement. The agreement between the KDHE and OEC, a copy of which is attached as Exhibit 5, setting out the procedures, criteria, and requirement for information in the determination of which Tracts are to transfer under a Covenant Deed and which are to transfer under a Deferred Covenant Deed.

1.10. Classification Consultant. The consultant hired by OEC to assist in carrying out OEC's responsibilities in the Classification Agreement.

1.11. Closing Agent. The entity selected by the Parties to hold the Purchase Price, the Government Closing Documents, and the KSPDC Closing Documents pursuant to the Closing Instructions.

1.12. Closing Documents. Those documents required to be delivered by the Parties at any Closing as required herein.

1.13. Closing Instructions. The agreement between the Government and KSPDC whereby the Purchase Price, the Government Closing Documents, and the KSPDC Closing Documents are deposited with a Closing Agent in order to facilitate the Closings in substantially the form attached hereto as Exhibit 6.

1.14. Closings. The transaction during which the Closing Documents are executed and delivered by the Government and KSPDC to each other, and the Government transfers all or a portion of Sunflower to KSPDC. It is contemplated that there will be multiple Closings.

1.15. Closing Specific Related Personal Property. Those portions of the Related Personal Property which transfer at a particular Closing.

1.16. Congressional Approval. Pursuant to 40 USC § 471 et seq., the date this Conveyance Agreement is approved or deemed approved by the Government Oversight Committee of the House of Representatives of the United States Congress and the Government Affairs Committee of the Senate of the United States Congress.

1.17. Consent Order. The Consent Order filed before the KDHE. “In the Matter of Pollution at Sunflower Army Ammunition Plant,” Case No. _____, entered by and among KDHE, the Irrevocable Trust, and OEC, dated _____, 2000, in the form attached hereto as Exhibit 7, and any supplements or amendments thereto.

1.18. Constituents of Concern. Any substance that is a Hazardous Substance, petroleum, or a petroleum product.

1.19. Contractor. The remediation contractor initially employed to carry out the Work (as defined in the Consent Order) and any successor or replacement remediation contractor employed to carry out the Work.

1.20. Corrective Action. All activities, except for Sections 62-66 of the Consent Order, to be undertaken by OEC in accordance with the SOWs (as defined in the Consent Order), the final Work Plans (as defined in the Consent Order), and the other plans approved by KDHE.

1.21. Conveyance Agreement. This Memorandum of Agreement, including the Exhibits attached hereto which are incorporated herein by reference and made a part of this Conveyance Agreement.

1.22. Cost Cap Policy. An insurance policy, in the form attached hereto as Exhibit 8.

1.23. Covenant Deed. A recordable quitclaim deed either in the form of Exhibit 9 or Exhibit 10.

1.24. Covenant PLL Policy. An insurance policy, in the form attached hereto as Exhibit 11.

1.25. Deeds. The Covenant Deeds and Deferred Covenant Deeds.

1.26. Deferred Covenant Deed. A recordable quitclaim deed in the form of Exhibit 12.

1.27. Deferred Covenant PLL Policy. A pollution legal liability insurance policy in the form attached hereto as Exhibit 13.

1.28. Delayed AREP Closing. Any Closing pursuant to Section 3.5 involving a Tract included within the AREP Property.

1.29. EBS. The investigative report entitled “Environmental Baseline Survey for Sunflower Army Ammunition Plant” dated October 1998, prepared by the Army, together with all attachments and settlements thereto.

1.30. Effective Date. The date the GSA signs this Conveyance Agreement.

1.31. Explosive Risk. An explosive safety hazard associated with the presence of explosives, propellants, or other contaminants including, but not limited to, nitrocellulose, nitroglycerin, or nitroguanidine, which is determined by the Army to render any Related Personal Property or Tract to:

- a) Have explosive contamination determined to be 1X or 3X, as those terms are defined in IOC Pamphlet 385-1;
- b) Be unsuitable for transfer to the general public;
- c) Be unsuitable for transfer by the GSA under this Conveyance Agreement without deed restrictions or notices relating to explosives, propellants, or contaminants, except for the notice set out in Exhibit 14;
- d) Be unsuitable to receive the certificate from the Army set out in Exhibit 15; or
- e) Be handled only by a person with BATF explosives license or certificate.

1.32. Extraordinary AREP Closings. Any Closing pursuant to Section 3.4 relating to a Tract included within the AREP Property.

1.33. Final Qualified Expenses. The sum of: (i) the aggregate amount of Qualified Expenses; and (ii) the aggregate cost, not to exceed \$9,000,000 (including any amounts for which credit is given pursuant to Subsection 2.2(b)), to obtain the Cost Cap Policy, Covenant PLL Policy, Deferred Covenant PLL Policy, the Performance and Payment Bonds, and the Surety Bond.

1.34. First Closing. The first Closing to be conducted pursuant to this Conveyance Agreement.

1.35. First Closing Property. The real estate transferred at the First Closing shall consist of the Park Footprint together with such other portions of Sunflower described in Exhibit 16.

1.36. Government. The United States of America, but not the United States Environmental Protection Agency. The United States Environmental Protection Agency is not a party to this Conveyance Agreement and the Parties agree and understand that this Conveyance Agreement does not limit, restrict or otherwise affect the enforcement or other authority available to the United States Environmental Protection Agency at or related to Sunflower.

1.37. GSA. The General Services Administration of the United State of America established pursuant to the authority of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377, 40 U.S.C. §§471, et seq.).

1.38. Hazardous Substance. Any substance that is defined or designated as a “hazardous substance” pursuant to 42 U.S.C. § 9601 or § 9602.

1.39. Historic Preservation Memorandum of Agreement. The Historic Preservation Memorandum of Agreement between the SHPO and the GSA dated _____, 2000, in the form attached hereto as Exhibit 17 and any supplements or amendments thereto.

1.40. Irrevocable Trust. The irrevocable trust, established pursuant to the Irrevocable Trust Agreement dated _____, 2000, a copy of which is attached as Exhibit 18.

1.41. KDHE. The Kansas Department of Health and Environment.

1.42. KDHE Permits. KDHE Solid Waste Disposal Permit 340 and KDHE Industrial Landfill Permit 684.

1.43. KSPDC. The Kansas Statewide Projects Development Corporation, an instrumentality of the State of Kansas and a subsidiary of the Kansas Development Finance Authority, created pursuant to K.S.A. § 74-8904(v), as amended.

1.44. OEC. The OZ Entertainment Company, a Delaware corporation.

1.45. Park Footprint. That portion of Sunflower more fully described in Exhibit 19.

1.46. Parties. The Government and KSPDC.

1.47. Performance and Payment Bonds. The 100% performance bond and 50% payment bond provided by the Contractor copies of which are attached as Exhibits 20 and 21, respectively.

1.48. Permits. All of the permits presently held or required to be held by the Army pursuant to any state, federal or local law, statute, or regulation relating to Sunflower.

1.49. Permitted Exceptions.

a) Those existing easements, reservations, leases, licenses, permits, facility use contracts, tenant use agreements, approved by KSPDC and as described on the attached Exhibit 22.

b) Notices, pending litigation, and restrictions established pursuant to Exhibit 22.

c) Existing building or zoning laws, as applicable.

d) Those existing subtenants or licensees approved in writing by KSPDC and described in the attached Exhibit 22.

e) The limited rights reserved by the Government to use and occupy portions of Sunflower in coordination with KSPDC, as specifically described in Exhibit 22.

f) Such other easements, reservations, leases, licenses, permits, facility use contracts or restrictions as may be mutually agreed upon in writing by KSPDC and the Government.

g) United Tribe of Shawnee Indians v. Cohen, USDC, D. Kan., Case Number CIV-99-2063-GTV, together with all appeals of issues currently filed pursuant thereto.

h) TOTO v. United States, USDC D. Kan., Case Number CIV-00-2136-CM.

1.50. Promissory Note. A non-recourse promissory note executed by KSPDC to the Government in the sum of \$15,000,000.00, in the form attached hereto as Exhibit 23.

1.51. Purchase Price. \$15,000,000 and other good and valuable consideration in favor of the Government, more particularly described in Section 2.3.

1.52. Qualified Expense shall mean those expenses incurred by or on behalf of OEC or the Irrevocable Trust pursuant to the Classification Agreement or for Corrective Action as determined by the KDHE pursuant to Section XV of the Consent Order.

1.53. RCRA Permit. Resource Conservation and Recovery Act Hazardous Waste Facility Permit EPA ID No. 3213820878

1.54. Real Estate Mortgage. The real estate mortgage executed by KSPDC securing the payment of the Promissory Note in the form attached hereto as Exhibit 24.

1.55. Related Personal Property. All federally owned related personal property (as defined under either Kansas law or Army policy) present at Sunflower as of September 17, 1999, LESS AND EXCEPT the specific property identified, reserved and retained by the Government, as set out in Exhibit 25.

1.56. Remediation. Any remedial or corrective action that the Army is required to undertake under any Law or Regulation (as defined in the Army Agreement) or the Army Agreement as to any Constituent of Concern at or associated with Sunflower.

1.57. Remediation Contract. The contract between OEC and the Contractor to carry out the Work (as defined in the Consent Order).

1.58. Routine Maintenance. Any: (a) routine inspection of any Unit; (b) ordinary long-term monitoring, sampling, analysis, and reporting of defined and mutually agreed media locations required for any Unit; (c) ordinary and necessary maintenance of the landfill cap of any Unit, and (d) any other routine services for closure systems.

1.59. Second Closing. The Closing more fully described in Section 3.2(c).

1.60. Second Closing Property. The real estate transferred at the Second Closing shall consist of all of Sunflower other than real estate transferred at the First Closing and the AREP Property.

1.61. SHPO. The Kansas State Historic Preservation Officer.

1.62. Special Closing Requirements. The varying requirements for Closing which apply to Tracts included within the AREP Property. The requirements vary from Tract to Tract and are described below. A Tract may be subject to multiple Special Closing Requirements.

- a) As to any Tracts containing any portion of any treatment, storage, or disposal facilities subject to the RCRA Permit, a written determination by the KDHE that the approved closure plan for those facilities have been completed subject only to: (i) ordinary and routine conditions and (ii) as to the open burning ground portion of those facilities, any groundwater remediation to be addressed as part of Corrective Action of such SWMUs pursuant to the Consent Order;
- b) As to any Tracts subject, in any way, to KDHE Solid Waste Disposal Permit 340, a written determination by the KDHE that all requirements of that permit have been satisfied, except Routine Maintenance;
- c) As to any Tracts subject, in any way, to KDHE Industrial Landfill Permit 684, a written determination by the KDHE that all requirements of that permit have been satisfied, except Routine Maintenance;
- d) As to any Tracts leased, formerly leased, used, occupied, or contaminated by Koch Sulfur Products Company, a written certification by the Army in the form of Exhibit 26;
- e) As to any Tracts subcontracted to, used, occupied, or contaminated by Kansas Wastewater Inc., a written certification by the Army in the form of Exhibit 27;
- f) As to any Tracts which contain an Explosive Risk, the unqualified certification by the Army in the form of Exhibit 15; and
- g) As to any Tracts which contain any portion of SWMUs 10, 11, or 50, a written determination by the EPA or KDHE, as applicable, that all required RCRA corrective action as to such SWMUs has been completed.

1.63. Sunflower. The approximately nine thousand sixty-five (9,065) acres of real property situated in Johnson County, Kansas, more particularly described in the attached Exhibit 28, together with: (i) the Related Personal Property; (ii) all mineral rights and Water Rights; and (iii) all improvements, hereditaments, easements appurtenant and benefiting Sunflower, appurtenances and tenements therein, and all reversions, remainders, issues, profits and other rights belonging or related thereto; LESS AND EXCEPT the specific reservations and exceptions retained by the Government described in the Covenant Deeds and the Deferred Covenant Deeds.

1.64. Surety Bond. The Surety Bond executed by a third party, assuring \$45,000,000 is available to pay for the Corrective Action, in the form of Exhibit 29.

1.65. Tract. The 500 ft. by 500 ft. portions (or parts thereof) of the real property included in Sunflower as reflected in Exhibit 30.

1.66. Transfer Date. As to each Tract, the date a Tract is transferred to KSPDC.

1.67. Unit. Any landfill subject to either KDHE Permit.

1.68. Water Rights. All groundwater rights within the boundaries of the fee estate of Sunflower.

ARTICLE 2. AGREEMENT TO PURCHASE

2.1. Agreement to Purchase. In accordance with Section 484(e)(3)(H) of Title 40, United States Code, this Conveyance Agreement represents a contract whereby the Government agrees to convey to KSPDC, and KSPDC agrees to acquire Sunflower in fee simple determinable, for the Purchase Price, including but not limited to, all payments required under Sections 2.2 and 2.4, below, the Remediation obligations under the Army Agreement of the parties thereto and the Corrective Action obligations under the Consent Order of the parties thereto, the Promissory Note, the Real Estate Mortgage, the Remediation Contract, the Performance and Payment Bonds, the Cost Cap Policy, the Covenant PLL Policy, the Deferred Covenant PLL Policy, the Surety Bond, and the Irrevocable Trust.

2.2. Deposit. KSPDC shall provide the Government with a deposit of \$1,500,000.00 consisting of the following payments:

a) A \$250,000 check delivered to the Government within 5 days prior to the date the Conveyance Agreement is submitted to the United States Congress for consideration. If the Conveyance Agreement is approved by the Congress the Government will, at the First Closing, cash the check and retain the proceeds in accordance with the Closing Instructions. If the Conveyance Agreement is not approved by the Congress, or if this Conveyance Agreement is terminated prior to the First Closing, the Government will return the check uncashed to KSPDC.

b) A \$900,000 credit towards Final Qualified Expenses for costs incurred by KSPDC, its successors or assigns, for commitment fees and premiums for the Covenant PLL Policy, Cost Cap Policy, Deferred Covenant PLL Policy, and Surety Bond which are incurred before the First Closing.

c) A \$250,000 check provided by KSPDC at the First Closing to be cashed at the Second Closing in accordance with the Closing Instructions. If the Second Closing is not held pursuant to Section 3.2, the check shall be returned to KSPDC.

d) A \$100,000 check provided at the First Closing to be deposited into an escrow account pursuant to the Closing Instructions. If the Second Closing is not held pursuant to Section 3.2, solely as the result of actions of KSPDC, the money in this escrow account shall belong to the Government who shall cash the check. If Second Closing does not occur pursuant to Section 3.2 for any other reason, the money in this escrow account shall belong to KSPDC.

2.3. Remediation and Financial Assurance Documents. At the First Closing and as a part of the Purchase Price, KSPDC shall arrange for the execution and delivery to the Government of the Army Agreement and the Consent Order. To further secure the obligations of KSPDC, its successors or assigns, to the Government under this Conveyance Agreement, the Remediation obligations under the Army Agreement, and the Corrective Action obligations

under the Consent Order, the Parties understand and agree that the total financial assurance package consists of:

- a) The Promissory Note,
- b) The Real Estate Mortgage,
- c) The Surety Bond,
- d) The Cost Cap Policy,
- e) The Covenant PLL Policy,
- f) The Deferred Covenant PLL Policy,
- g) The Irrevocable Trust,
- h) The Remediation Contract, and
- i) The Performance and Payment Bonds.

2.4. Additional Proceeds. In addition to the other sums and obligations to be provided by KSPDC:

a) Subject to Subsection 2.4(b), if the Final Qualified Expenses are less than \$37,000,000, the difference between \$37,000,000 and the Final Qualified Expenses shall be paid by the successors or assigns of KSPDC to the Government. This amount shall be paid by the successors or assigns of KSPDC within 90 days of the earlier of: (i) the termination of the Consent Order as to both OEC and the Irrevocable Trust; or (ii) the satisfaction of the OEC Remediation Commitment (as defined in the Army Agreement).

b) If, at the earlier of: (i) the determination of the Final Qualified Expenses or (ii) twelve (12) years after the First Closing, at least 100 acres of Sunflower remains to be transferred to KSPDC under this Conveyance Agreement, the \$37,000,000 amount identified in Subsection 2.4(a) shall be reduced by \$7,000 for each acre not then transferred.

c) The successors or assigns of KSPDC shall:

(i) In the event a theme park is opened by OEC at Sunflower, pay to the Government Three Million Dollars (\$3,000,000) as follows:

(A) One Million Dollars (\$1,000,000) on the second anniversary of the formal opening of such theme park with interest thereon from the formal opening date to the second anniversary date computed per annum on the yield of ten (10) year United States Treasury maturities as reported by the Federal Reserve Board and "Federal Reserve Statistical

Release H.15” plus ____% rounded to the nearest one eighth percent (1/8%);

(B) One Million Dollars (\$1,000,000) on the sixth anniversary of the formal opening of such theme park, with interest thereon from the formal opening date to the sixth anniversary date computed per annum on the yield of ten (10) year United States Treasury maturities as reported by the Federal Reserve Board and “Federal Reserve Statistical Release H.15” plus ____% rounded to the nearest one eighth percent (1/8%); and

(C) One Million Dollars (\$1,000,000) on the eighth anniversary of the formal opening of such theme park, with interest thereon from the formal opening date to the eighth anniversary date computed per annum on the yield of ten (10) year United States Treasury maturities as reported by the Federal Reserve Board and “Federal Reserve Statistical Release H.15” plus ____% rounded to the nearest one eighth percent (1/8%).

(ii) Pay the Government \$500,000 by January 31, 2002.

2.5. Classification of Sunflower. The Classification Consultant will perform such studies regarding Sunflower as to allow KDHE, pursuant to the Classification Agreement, to determine which portions of Sunflower are suitable for conveyance under a Covenant Deed, which portions of Sunflower are suitable for conveyance pursuant to a Deferred Covenant Deed, and which portions of Sunflower will be AREP Property.

2.6. Procedure for Classification of Sunflower and Preparation of Deeds. The Deeds shall contain deed restrictions, as provided in Exhibit 31, which provide for limitations on the use of Sunflower to ensure the protection of human health and the environment with respect to Hazardous Substances found on Sunflower or include the CERCLA covenants and other notices and deed restrictions as required by applicable laws and regulations.

a) The Classification Agreement sets out procedures, criteria, and required information for determination of whether Tracts qualify for transfer under a Covenant Deed or a Deferred Covenant Deed. The Classification Agreement provides that the Classification Consultant shall undertake to obtain the information required by KDHE for determination for such classification as soon as practicable following execution of this Conveyance Agreement. The Government shall use the information generated pursuant to the Classification Agreement to determine the Tracts to transfer by Covenant Deed, the Tracts to transfer by Deferred Covenant Deed, and the Tracts that are AREP Property. The Classification Consultant shall perform the investigation-related activities under the Classification Agreement.

b) As to each Deed, the covenants to be provided by the Government, the notices to be made by the Government, and the restrictions to be imposed will be determined by the Government and KDHE in accordance with the procedures set out in Exhibit 31.

c) The restrictions and notices included in any Deed pursuant to Section 2.6(b) shall be removed or modified in accordance with the procedures set out in Exhibit 31.

2.7. Permits. Except as specifically reserved and retained by the Government herein, the Government will transfer to the successors or assigns of KSPDC, all legally transferable Permits including, but not limited to, permits for environmental cleanup, utilities, communications, and other systems which the successors or assigns of KSPDC will accept. KSPDC and the Government agree to cooperate in the undertaking and completion of the processes and approvals necessary for the timely implementation of said transfers in accordance with the terms of this Conveyance Agreement.

ARTICLE 3. CLOSINGS

3.1. Closing Schedule. The Parties agree to abide by the schedule for the conveyance of Sunflower as set forth in this Section. Should an action described in this Section not take place by the date or time frame identified in the appropriate subsection, all subsequent dates or time frames for all subsequent actions, with the agreement of the Parties shall be deferred on a day for day basis as provided in Sections 3.4 and 3.5. Any closing costs associated with the Closing Agent will be paid by KSPDC, its successors or assigns.

a) The First Closing shall occur within 90 days after Congressional Approval. This First Closing may be delayed upon the written agreement of GSA, Army, KSPDC, OEC, and KDHE. To the extent those parties agree to extend the date of the First Closing, the amount of Final Qualified Expenses shall be increased by \$500,000 for each 90 days of extension.

b) The Second Closing shall, subject to the agreement of the Parties, occur 20 days after all of Sunflower, other than the First Closing Property and the AREP Property, is classified pursuant to the Classification Agreement, to transfer with either a Covenant Deed or a Deferred Covenant Deed.

c) Beginning after the Second Closing, an AREP Closing shall be tentatively scheduled for every May 1 and November 1 of each year until all AREP Property has been transferred to KSPDC. The Government will notify KSPDC by each February 1 and August 1, respectively, (or if such day is not a business day, the next business day) of the property to be conveyed, if any, and the Government and KSPDC shall determine, within thirty (30) days of notice to KSPDC whether the next, tentatively scheduled AREP Closing shall occur. All AREP Closings shall occur no later than two hundred and forty (240) days after the applicable dates set out in Exhibit 32 or as provided in Sections 3.4 or 3.5.

3.2. Requirements for all Closings. In order to manage the classification and conveyance of the Covenant and Deferred Covenant Deeds to be utilized at the scheduled Closings, the Parties shall use the following procedures:

a) The Parties will use their best efforts to consummate the Closings of Sunflower by no later than as set out in Section 3.1, or such other mutually agreeable dates. The Closings shall be consummated at such place as the Parties may mutually agree.

b) First Closing. The Government and KSPDC shall deliver to the Closing Agent on or prior to the First Closing the following Closing Documents reasonably satisfactory to KSPDC, and in a form previously reviewed and approved by KSPDC, which will be held pursuant to the terms of the Closing Instructions:

1) As to the Government:

(i) The executed Covenant Deeds and/or Deferred Covenant Deeds for the First Closing Property.

(ii) The Assignment of Government Interest in Leases affecting the First Closing Property in the form attached as Exhibit 33, together with estoppel certificates, in the form attached as Exhibit 34 and in substance satisfactory to KSPDC for each lease to which the Army is a party and which relates, in any way, to any of the First Closing Property.

(iii) The Assignment of the Government's Interest in each Permit set out in Exhibit 35.

(iv) Evidence, reasonably satisfactory to KSPDC, its successor(s) or assign(s), that, in connection with the easement given Hunt Midwest Mining, Inc. by the Army concerning Sunflower dated July 24, 1990, the Army has notified Hunt Midwest Mining, Inc. that it has terminated the easement.

(v) The executed Closing Instructions.

(vi) Copies of all existing construction drawings, reports, and documents concerning as-built conditions of the facilities as well as identification of the location of the repository for all environmental reports, studies, tests and records relating to Sunflower.

(vii) Written evidence, satisfactory to KSPDC that all tenant use agreements containing any rights in or to the First Closing Property have been properly terminated.

(viii) Copies of all contracts of management, maintenance, service, supply, or rental relating to any of Sunflower which remain in effect after the First Closing.

(ix) Written evidence, satisfactory to KSPDC, that Kansas Wastewater, Inc.'s right to any portion of Sunflower has been terminated.

- (x) The Army Agreement executed by the Army.
 - (xi) Certification that all representations of the Government in the Conveyance Agreement, to the best of the Government's knowledge and belief, are true and correct as of the date of the First Closing.
 - (xii) A Bill of Sale executed by the Government regarding all Closing Specific Related Personal Property located on the First Closing Property, together with those portions of the Related Personal Property set out in Exhibit 36.
 - (xiii) A properly executed Affidavit of Non-Production regarding all oil or gas leases affecting Sunflower in the form of Exhibit 37.
 - (xiv) A properly executed Affidavit of Seller in the form of Exhibit 38.
 - (xv) Evidence, in the form of Exhibit 39, of the approval by the Department of Defense Explosives Safety Board of the Army's plan to address all Explosive Risks affecting the First Closing Property.
 - (xvi) A certificate, in the form of Exhibit 15, from the Army indicating that no Explosive Risk effects or exists on the First Closing Property and the Closing Specific Related Personal Property to transfer at the First Closing.
 - (xvii) Such additional documents as are required of the Government by Federal Law or by Kansas law as constitutionally permitted under Federal Law.
- 2) As to KSPDC:
- (i) The Closing Instructions executed by KSPDC.
 - (ii) The Promissory Note executed by KSPDC.
 - (iii) The Remediation Contract executed by OEC and the Contractor.
 - (iv) The issued Cost Cap Policy.
 - (v) The issued Covenant PLL Policy.
 - (vi) The issued Performance and Payment Bonds.
 - (vii) The issued Surety Bond.
 - (viii) The issued Deferred Covenant PLL Policy.

(ix) The Irrevocable Trust executed by OEC and the trustee named therein.

(x) Certification that all representations of KSPDC in the Conveyance Agreement, to the best of KSPDC's knowledge and belief, are true and correct as of the date of the First Closing.

(xi) Written evidence that Kansas State University, the University of Kansas, Water District No. 1 of Johnson County, Johnson County Parks Department, the City of DeSoto, and the DeSoto, Kansas School District have each withdrawn their respective public benefit conveyance requests from Government consideration.

(xii) The Real Estate Mortgage executed by KSPDC.

(xiii) The Army Agreement executed by OEC.

(xiv) The Consent Order executed by OEC and KDHE.

(xv) The checks described in Subsections 2.2(c) and (d).

(xvi) Evidence, reasonably satisfactory to the Government, that KSPDC or its successors or assigns offered each of the persons who, prior to the First Closing, had been a party to a tenant use agreement with Alliant (other than Kansas Wastewater, Inc. and Koch Sulfur Products Company) in connection with any of the First Closing Property a lease or other use arrangement on terms substantially similar to those of the corresponding former tenant use agreements.

(xvii) Such additional documents as are required of KSPDC by Kansas law.

c) Second Closing. The Government and KSPDC shall deliver to the Closing Agent on or prior to the Second Closing, the following additional Closing Documents reasonably satisfactory to KSPDC, in a form previously reviewed and approved by KSPDC, which shall be held pursuant to the terms of the Closing Instructions:

1) As to the Government:

(i) Release of the Real Estate Mortgage.

(ii) Deferred Covenant Deeds for the various Tracts making up the AREP Property.

(iii) The executed Covenant Deeds and/or Deferred Covenant Deeds for the Second Closing Property.

(iv) The Assignment of Government Interest in Leases affecting the Second Closing Property in the form attached as Exhibit 33, together with estoppel certificates, in the form attached as Exhibit 34, and in substance satisfactory to KSPDC, for each lease to which the Army is a party or which relates, in any way, to any of the Second Closing Property.

(v) Written evidence, satisfactory to KSPDC, that all tenant use agreements containing any rights in or to the Second Closing Property have been properly terminated.

(vi) The Promissory Note marked “canceled.”

(vii) Certification that all representations of the Government in the Conveyance Agreement, to the best of the Government’s knowledge and belief, are true and correct as of the date of the Second Closing.

(viii) A Bill of Sale executed by the Government regarding all Closing Specific Related Personal Property located on the Second Closing Property, together with the Related Personal Property set out in Exhibit 40.

(ix) A certificate, in the form of Exhibit 15, from the Army indicating that no Explosive Risk effects or exists on the Second Closing Property and the Closing Specific Related Personal Property to transfer at the Second Closing.

(x) A properly executed Affidavit of Seller in the form of Exhibit 39.

(xi) Such additional documents as are required of the Government by federal law or by Kansas law as constitutionally permitted under federal law.

2) As to KSPDC:

(i) Certification that all representations of KSPDC in the Conveyance Agreement, to the best of KSPDC’s knowledge and belief, are true and correct, as of the date of the Second Closing;

(ii) The Use Agreement affecting the Second Closing Property;

(iii) Evidence, reasonably satisfactory to the Government that KSPDC or its successors or assigns, offered each of the persons who, (other than Kansas WasteWater Inc. and Koch Sulfur Products Company) prior to the Second Closing had been a party to a tenant use agreement with Alliant in connection with any of the Second Closing Property a lease or other use arrangement on terms substantially similar to those of the corresponding former tenant use agreement.

(iv) Such additional documents as are required of KSPDC by Kansas law.

d) Additional AREP Closing Deliveries. The Government and KSPDC shall deliver to the Closing Agent on or prior to each AREP Closing, the following additional Closing Documents, reasonably satisfactory to KSPDC, in a form previously reviewed and approved by KSPDC, which shall be held pursuant to the terms of the Closing Instructions:

1) As to the Government:

(i) Certification by the Government, as set out in Exhibit 41, confirming that all of its responsibilities to carry out the AREP have been completed as to the Tracts to be transferred at the AREP Closing.

(ii) The executed Covenant Deeds and/or Deferred Covenant Deeds for the Tracts to be transferred at the AREP Closing replacing the Deferred Covenant Deeds for such Tracts delivered by the Government pursuant to Subsection 3.2 (c) (1) (ii) if any changes to the originally delivered Deferred Covenant Deeds are required by the Government.

(iii) The Assignment of Government Interest in Leases and other related agreements affecting the AREP Property in the form attached as Exhibit 33, together with estoppel certificates, in the form attached as Exhibit 34 and in substance satisfactory to KSPDC, for each lease to which the Army is a party and which relates, in any way, to any of the Tracts to be transferred at the AREP Closing.

(iv) Written evidence, satisfactory to KSPDC, that all tenant use agreements containing any rights in or to the Tracts to be transferred at the AREP Closing have been properly terminated.

(v) Certification that all representations of the Government in the Conveyance Agreement, to the best of the Government's knowledge and belief, are true and correct as of the date of the AREP Closing.

(vi) Documentation satisfying such of the Special Closing Requirements as apply to the Tracts to be transferred at the AREP Closing.

(vii) A Bill of Sale executed by the Government regarding all Closing Specific Related Personal Property located on the Tracts to be transferred at the AREP Closing together with such other Related Personal Property as the Parties agree.

(viii) A properly executed Affidavit of Seller in the form of Exhibit 38.

(ix) A certificate, in the form of Exhibit 15, from the Army indicating that no Explosive Risk affects or exists on the Tracts to be transferred at the AREP Closing and the Related Personal Property to be transferred at the AREP Closing.

(x) Such additional documents as are required of the Government by federal law or by Kansas law as constitutionally permitted under federal law.

2) As to KSPDC:

(i) Certification that all representations of KSPDC in the Conveyance Agreement, to the best of KSPDC's knowledge and belief, are true and correct, as of the date of the AREP Closing; and

(ii) Such additional documents as are required of KSPDC by Kansas law.

3.3. Conditions Precedent. KSPDC's and the Government's obligations to consummate the transactions contemplated hereunder are conditioned upon satisfaction of each of the following conditions at or prior to each and every Closing (or such earlier date as is specified with respect to a particular condition).

a) Additional conditions precedent to KSPDC's obligations are:

1) None of the representations and warranties of the Government in this Conveyance Agreement shall be untrue or inaccurate in any material respect.

2) The Government shall not have failed to perform or to comply with any of its agreements or obligations stated herein in a material manner.

3) KSPDC shall not have disapproved any of the items delivered pursuant to Section 3.2 hereof, by notice delivered to the Government on or before ten (10) days after KSPDC's receipt of all such items.

4) The Government shall have delivered to KSPDC, at the Government's expense, all approvals and consents including, without limitation, regulatory and governmental authorities' consents, required for KSPDC to take title to any Tract.

5) KSPDC shall obtain from the Title Insurer an Extended Coverage ALTA Policy of Title Insurance and all endorsements thereto requested by KSPDC insuring KSPDC's title thereto in fee simple determinable in the amount of the Purchase Price subject only to the Permitted Exceptions and the Real Estate Mortgage, which policy shall be acceptable in form and substance to KSPDC, in KSPDC's sole and absolute discretion.

6) The materials to be delivered by the Government pursuant to Section 3.2 have been delivered.

7) OEC or another developer acceptable to KSPDC is, in KSPDC's sole discretion, available and obligated to take title to the Tracts to be transferred at the Closing.

b) Additional conditions precedent to the Government's obligations are:

1) None of the representations or warranties of KSPDC set forth in the Conveyance Agreement shall be untrue or inaccurate in any material respect.

2) KSPDC, or its successors or assigns, shall not have failed to perform or comply with any of its agreements or obligations stated herein in a material manner.

3) KSPDC shall have delivered to the Government at KSPDC's expense all approvals and consents within KSPDC's possession at or prior to the Closing, including regulatory and governmental authorities' consents, required for authority to take title to any portion or portions of Sunflower.

4) The Government shall not have disapproved any of the items delivered pursuant to Section 3.2 for the Closing, by notice delivered to KSPDC on or before ten (10) days after the Government's receipt of all such items.

5) The materials to be delivered by KSPDC pursuant to Section 3.2 for the Closing have been delivered.

6) Only as to the First Closing, no event of default pursuant to Section 14 of the Army Agreement has occurred and exists.

3.4. Extraordinary AREP Closing. If the Government has completed the AREP and delivered to the Closing Agent the additional documents described in Subsection 3.2(d)(1) and KSPDC, for any reason, has failed to complete the AREP Closing in accordance with this Conveyance Agreement, the Government may, subject to Subsection 3.3(a)(7), but is not required, to issue written instructions to the Closing Agent directing it to record, pursuant to the Closing Instructions, the Deeds for the AREP Property in the Johnson County, Kansas real estate records.

3.5. Delayed AREP Closing. If any AREP Closing does not occur by the applicable date established in Exhibit 32, KSPDC may, but is not required, to direct the Closing Agent to record in the Johnson County, Kansas real estate records any of the Covenant Deeds or Deferred Covenant Deeds for the AREP Property certified by KDHE as acceptable for conveyance. The Parties agree the final Closings of the remainder of the AREP Property will be delayed until the conditions applicable to the remaining AREP Property under Subsection 3.2(d) have been satisfied, at which time the Government shall, pursuant to the Closing Instructions and subject to

Subsection 3.3 (a) (7), deliver to the Closing Agent and KSPDC evidence that the conditions have been met and direct the Closing Agent to record the respective Deeds.

ARTICLE 4. EFFECT OF TRANSFER OF TITLE AND CONTINUING OBLIGATIONS OF THE GOVERNMENT

4.1. Effects of Deeds. The delivery of the executed Deeds pursuant to this Conveyance Agreement from the Government to KSPDC shall be deemed full performance by the Government of its obligations hereunder with regard to the portion of Sunflower conveyed by each Deed other than any obligations of the Government which are required by this Conveyance Agreement, the Army Agreement, the Addendum to the Consent Order, or by law including without limitation any obligations under CERCLA Section 120(h) to be performed after the delivery of each such Deed.

4.2. As-is, Where-is. Except as provided herein, all of Sunflower conveyed hereunder will be in an “As-is Where-is” condition and without any representation or warranty whatsoever and without any obligation on the part of the United States of America except as expressly provided for by law or in this Conveyance Agreement.

4.3. Liabilities. Except as otherwise provided for in this Conveyance Agreement, the Government shall remain responsible for all liabilities, claims, demands, penalties, compliance orders, judgments, suits, litigation, or amounts payable (collectively, “Pre-Closing Obligations”) against the Government or any portion of Sunflower attributable to the period prior to the conveyance of such portion of Sunflower to KSPDC. Upon acquiring actual knowledge thereof, KSPDC shall notify the Government of the existence or occurrence of any such Pre-Closing Obligations and shall cooperate, but at no cost to KSPDC, with the Government in the payment, settlement and disposition thereof.

ARTICLE 5. TITLE EVIDENCE; SURVEY; AND LEGAL DESCRIPTIONS

5.1. Title Evidence; Survey. Any title insurance or survey which may be desired by KSPDC will be procured at no cost or expense to the Government. The Government will, however, cooperate with KSPDC, its successors or assigns, or any authorized agent thereof, and will permit examination and inspection of any documents relating to the title of Sunflower as it may have available. It is understood that the Government will not be obligated to pay for any expense incurred in connection with title matters or survey for Sunflower.

5.2. Issuance of Title Policy. As a condition precedent to KSPDC’s obligation for each Closing under this Conveyance Agreement, KSPDC, its successors and assigns, shall obtain from the Title Insurer an Extended Coverage ALTA Policy of Title Insurance and all endorsements thereto requested by KSPDC, its successors and assigns, insuring KSPDC’s, its successors and assigns, title thereto in fee simple determinable in the amount of the Purchase Price subject only to the Permitted Exceptions and the Real Estate Mortgage, which policy shall be acceptable in form and substance to KSPDC, its successors and assigns, in KSPDC’s sole discretion.

5.3. Legal Descriptions for Deeds. Preparation of metes and bounds descriptions for the Deeds used to convey Sunflower or portions thereof to KSPDC shall be the responsibility of KSPDC.

ARTICLE 6. GOVERNMENT'S OBLIGATIONS PRIOR TO CONVEYANCE

6.1. Restrictions. From the Effective Date of this Conveyance Agreement to the respective Closings, the Government shall not do, permit, or agree to do, any of the following:

a) Sell, encumber or grant any interest in Sunflower or any part thereof in any form or manner whatsoever or otherwise perform or permit any act which will diminish or otherwise affect the interests of KSPDC or its successors and assigns under this Conveyance Agreement or in or to Sunflower or which will prevent the Government's full performance of its obligations hereunder, unless KSPDC gives its prior written consent; or

b) Remove or alter any fixtures or Related Personal Property from Sunflower, other than the Related Personal Property set out in Exhibit 26, unless KSPDC gives its prior written consent.

6.2. Maintenance of the Property. From the Effective Date of this Conveyance Agreement to the Closing for each Tract, the Government, at the Government's sole cost and expense, shall maintain the portions of Sunflower not conveyed to KSPDC in a manner consistent with the conduct of the AREP and, except as to the ESP, with the intended redevelopment of Sunflower in accordance with its intended reuse by KSPDC.

6.3. Zoning and Assessment. From the Effective Date of this Conveyance Agreement to the Closing for each Tract, and upon the request of KSPDC, its successors and assigns, or the local jurisdiction having land use authority over a portion of Sunflower, the Government, as the owner of Sunflower, agrees to cooperate with successors and assigns of KSPDC in their efforts to petition Johnson County, or such other local land use jurisdiction, as appropriate, in the manner required by law to zone or to modify or to effect any land use matter concerning such portion of Sunflower, provided no payment of funds is required of the Government in connection with such petition or consent.

6.4. Annexation. From the Effective Date to the Closing for each Tract, and upon the request of KSPDC or the local jurisdiction having land use authority over a portion of Sunflower, the Government, as the owner of Sunflower, agrees to cooperate with KSPDC, its successors or assigns in its effort to petition Johnson County, or such other local land use jurisdiction, as appropriate, in the manner required pursuant to law, to annex such portion of Sunflower, as necessary, for the successful development of Sunflower, provided no payment of funds is required of the Government in connection with such petitions.

6.5. Delivery Requirements. Upon KSPDC's written request, the Government shall deliver, or otherwise make available to KSPDC, not later than ten (10) calendar days following the Effective Date, or as soon thereafter as they become available, true, correct and complete copies of the following, if not previously delivered to KSPDC:

- a) All, leases, contracts, licenses, permits, facility use agreements, tenant use agreements, or other instruments granting rights in or otherwise affecting Sunflower, including all amendments thereto relating to any portion of Sunflower;
- b) All plans and specifications for the improvements on Sunflower;
- c) Drawings of above and below ground utilities (including gas, sewer, well, septic, water, telephone and electrical service cables) located under or on Sunflower, in hard copy and electronic format, wherever available;
- d) All essential data, correspondence, documents, agreements, waivers, notices, applications, and other records with respect to Sunflower (including, without limitation, any records relating to transactions with taxing authorities, governmental agencies, utilities, and others with whom KSPDC, its successors or assigns may be dealing following its acquisition of Sunflower); and
- e) The EBS and any maps, amendments or material correspondence external to the Army related thereto.

6.6. Notification of Changes. The Government shall notify KSPDC if the Government becomes aware of any transaction or occurrence prior to any Closing which would make any of the representations of the Government contained in this Conveyance Agreement not true in any respect.

6.7. Completion of AREP. The Government shall complete the AREP in accordance with the Army Agreement and in the timeframes set forth in Exhibit 32.

ARTICLE 7. REPRESENTATIONS OF GOVERNMENT

The Government hereby represents to KSPDC, its successors and assigns, on and as of the Effective Date and as of each Closing as follows:

7.1. Execution of Agreement. The Government has full capacity, right, power and authority to execute, deliver and perform this Conveyance Agreement and all documents to be executed by the Government pursuant hereto, and all required action and approvals therefor have been duly taken and obtained. This Conveyance Agreement and all documents to be executed pursuant hereto by the Government are and shall be binding upon and enforceable against the Government in accordance with their respective terms.

7.2. Complete Information. To the best knowledge, information, and belief of the United States, information and belief, the information included in the Exhibits hereto and the documents to be delivered to KSPDC pursuant to this Conveyance Agreement or previously delivered to KSPDC are true, correct and complete in all material respects, and the same do not omit any material information required to make the submission thereof fair and complete.

7.3. Possession. To the best knowledge, information, and belief of the United States, the information included in the Exhibits hereto and the documents to be delivered to KSPDC pursuant to this Conveyance Agreement or previously delivered to KSPDC acknowledge any

leases or licenses in existence or persons who have possessory rights or any claims in respect to Sunflower that will survive all Closings.

7.4. Claims. Except as set out in Exhibit 42, to the best knowledge, information, and belief of the United States of America, there are no claims, causes of action, notice of violation, compliance order or other litigation or proceedings pending or threatened with respect to the ownership or operation of Sunflower or any part thereof (including disputes with mortgagees, governmental authorities, utilities, contractors or adjoining landowners). The Army is not aware of any finally unresolved, formal written notice of any claims or liabilities or threatened claims or threatened liabilities associated, directly or indirectly, with the existence of a Constituent of Concern on Sunflower from any third party, adjoining land owner, environmental interest group, former owner or operators of Sunflower, former employees, contractors, agents, or other persons.

7.5. Notice. To the best knowledge, information, and belief of the United States, it has not received any notice of (and is not otherwise aware of) any violations of any legal requirements with respect to Sunflower which have not been entirely corrected.

7.6. Screening Completed. Except as listed on Exhibit 43 hereto, there are no applications for a transfer of any portion of Sunflower which would, now or with the passage of time, with the giving or notice or with the receipt of approval by any agency or department of the Government, grant any right to or interest in any portion of Sunflower to any agency or department of the Government, an agency or department of the State of Kansas or any governmental subdivision of the State of Kansas, or any nonprofit corporation or entity, for-profit corporation or entity or any other person or entity.

7.7. Reports. The reports, studies and analyses identified in Exhibit 44 constitute all of the information which exists regarding Constituents of Concern at Sunflower, building drawings and specifications, process piping drawings and specifications, and site infrastructure drawings and specifications, (collectively, "Reports"). The Army has provided KSPDC, its successors and assigns, with a copy of each of the Reports. KSPDC may rely upon this representation by the Government, without limitation, as it relates to any claim against KSPDC, its successors or assigns, of noncompliance, liability, claims, losses, or damages involving, relating, or arising under an environmental law or regulation or involving the release, movement, or migration of any Constituent of Concern. For all other purposes (e.g., consequential damage to the successors and assigns of KSPDC relating to any project delay or claims for damages against the United States), this representation is limited to information presently known to the Army.

7.8. Environmental Concerns. The Reports identify all: underground storage tanks which exist or have existed at or under Sunflower; wells which exist on Sunflower; releases of Constituents of Concern; and locations of manufacturing operations, Constituents of Concern storage, treatment, and disposal sites on Sunflower, Constituents of Concern handling locations on Sunflower, and permitted and unpermitted landfills, whether temporary or permanent; and the existence of Constituents of Concern on Sunflower. KSPDC, its successors and assigns, may rely on this representation without limitation, as it relates to any claim against KSPDC or any of successor or assign of noncompliance, liability, losses, or damages arising under an environmental law or regulation or involving the release, movement, or migration of any

Constituent of Concern. For all other purposes (e.g., consequential damages relating to any project delay or claims for damages against the United States), this representation is limited to information presently known to the Army.

7.9. Permits. Exhibit 45 is a list of all Permits. The Army has provided KSPDC with a copy of each of the Permits.

7.10. Permit Compliance. The Army is in material compliance with the terms of each Permit as well as applicable state, federal, or local environmental law, statute, regulation, order or requirement.

7.11. Current Leases. Exhibit 46 is a list of all licenses, leases, facility use contracts, and other contracts or arrangements to which the Army is currently a party and which provides access to or rights of possession in Sunflower ("Leases"). The Army has provided a copy of each of the Leases to KSPDC.

7.12. Current Tenant Use Agreements. Exhibit 47 is a list of all tenant use agreements to which Alliant is currently a party and which provides access to or rights of possession in Sunflower ("Tenant Agreements"). The Army has provided a copy of each of the Tenant Agreements to KSPDC.

7.13. Former Leases. To the best of the Army's knowledge, Exhibit 48 is a list of all licenses, leases, facility use agreements and other contracts or arrangements to which the Army has been a party and which provided access to or rights of possession in Sunflower since 1940 other than the Leases ("Old Leases"). Except as set out in Exhibit 49, the Army has provided a copy of each Old Lease to KSPDC.

7.14. Former Tenant Use Agreements. To the best of the Army's knowledge, Exhibit 50 is a list of all facility use agreement which Alliant, or any of Alliant's predecessors, has been a party and which provided access or rights of possession in Sunflower since 1940, other than the Tenant Agreements ("Old Tenant Agreements"). Except as set out in Exhibit 51, the Army has provided a copy of each of the Old Tenant Agreements to KSPDC.

7.15. Deferred Covenant Representations. As required by CERCLA § 120(h)(3)(i)(II); the Government represents that:

a) All necessary response actions will be taken by: (i) the Army in accordance with the terms of the Army Agreement, and (ii) OEC in accordance with the terms of the Consent Order. Schedules for completing the respective response actions will be reviewed by Army, OEC and KDHE and updated as necessary under the respective agreements.

b) Notwithstanding any standard risk based priorities, the Army shall take all steps necessary to submit, as soon as possible, a budget request through established channels with the priority necessary to support its commitments under Subsections 2.9 and 2.12 of the Army Agreement in order to allow for timely development of Sunflower for funds to the Office of Management and Budget, that adequately address the funding

needs for the commitment. Providing said funds are received, the funding will not be used for any other purpose without the approval of the Assistant Secretary of the Army for Installations and the Environment. The Army will provide OEC ten (10) business days prior written notice before such a decision becomes final; provided that such notice does not materially interfere in the exercise of the Army's national defense responsibilities.

7.16. Contracts. As to the property described in each Closing described above, there are no contracts of employment, management, maintenance, service, supply, or rental, other than those identified in Exhibits 46 or 47 outstanding which affect any portion of Sunflower or its operation other than those which are described on the list to be supplied by the Government in Exhibit 52. All of said contracts are in full force and effect to the Government's best knowledge and belief, and there are no defaults on the part of any party thereunder. At option of KSPDC, its successors or assigns, with respect to any such contract, the Government shall cancel the contract or cause it to be amended so that it may be unilaterally canceled by KSPDC, its successors or assigns ten (10) days after Congressional Approval upon not more than thirty (30) days' notice and without penalty to KSPDC, its successors or assigns.

7.17. Improvements. As to the property described in each Closing described above, no construction, repair or improvements have been performed or are in progress by the Government and no materials have been furnished to Sunflower or any portion thereof, which might give rise to mechanic's, materialman's or other liens against Sunflower or any portion thereof.

7.18. Personal Property. The Related Personal Property includes, but is not limited to, the property set out in Exhibit 53.

ARTICLE 8. REPRESENTATIONS AND WARRANTIES OF KSPDC

8.1. Representations and Warranties of KSPDC. KSPDC hereby represents and warrants to the Government on and as of the date of this Conveyance Agreement and on and as of each Closing, that KSPDC has full capacity, right, power and authority under Kansas law to execute, deliver and perform this Conveyance Agreement and all documents to be executed by KSPDC pursuant hereto, and all required action and approvals therefor have been duly taken and obtained. The individuals signing this Conveyance Agreement and all other documents executed or to be executed pursuant hereto on behalf of KSPDC shall be duly authorized to sign the same on KSPDC's behalf and to bind KSPDC thereto. This Conveyance Agreement and all documents to be executed pursuant hereto by KSPDC are and shall be binding upon and enforceable against KSPDC in accordance with their respective terms.

ARTICLE 9. RETAINED LIABILITIES AND RESPONSIBILITIES

9.1. Prior Exposure to Lead Based Paint ("LBP"). KSPDC assumes no liability for damages for personal injury, illness, disability, death or property damage arising from (i) any exposure or failure to comply with any legal requirements applicable to LBP on any Tract arising prior to the Government's conveyance of the Tract to KSPDC pursuant to this Conveyance Agreement, or (ii) any LBP or LBP containing materials which were located on a Tract at any time prior to the date of the Government's transfer of the applicable portion of the Tract but are

no longer located thereon at the time of such lease or transfer, or (iii) any disposal, prior to the Government's transfer of the applicable portion of the applicable portion of a Tract, of any LBP or LBP containing materials.

9.2. Prior Exposure to Asbestos. KSPDC assumes no liability for damages for personal injury, illness, disability, death or property damage arising from (i) any exposure or failure to comply with any legal requirements applicable to asbestos on any portion of a Tract arising prior to the Government's conveyance of such portion of the Tract to KSPDC pursuant to this Conveyance Agreement, or (ii) any asbestos or asbestos containing materials which were located on the Tract at any time prior to the date of the Government's transfer of the applicable portion of a Tract but are no longer located thereon at the time of such lease or transfer, or (iii) any disposal, prior to the Government's transfer of the applicable portion of a Tract of any asbestos or asbestos containing materials.

9.3. Disclosure Removal. The parties agree that KSPDC, its successors or assigns may seek, at its own expense, approval of a procedure through the KDHE or other regulatory authority, whereby once the asbestos-containing material is removed from Sunflower in compliance with Federal and State standards pursuant to the applicable Deed the asbestos-containing materials disclosure shall be removed from the Deeds. The Government agrees to cooperate with the procedure, and sign amended Deeds as necessary.

9.4. Army Retained Liabilities. The Government acknowledges, recognizes and agrees that, as between the Army and OEC, and as provided for in the Army Agreement, the Army shall be solely responsible for and OEC shall have no liability or responsibility for claims, liability, costs, loss, death, injury, fines and penalties, or any damage to the extent or arising out of: (a) any remediation or other activities at Sunflower, including the transportation, treatment or disposal of Constituents of Concern, conducted by the Army, its agents, employees, lessees or contractors prior to the date of the Army Agreement or in order to fulfill the Army's responsibilities under Subsections 2.2 through 2.9 of the Army Agreement; (b) natural resource damages, except those caused solely by OEC in activities other than pursuant to the Classification Agreement, the Army Agreement, or the Consent Order; (c) any activities at Sunflower prior to the last Transfer Date of the Tract involved except those actions of OEC, its agents, employees, contractors, licensees, or invitees which are unlawful, improper, or negligent; or (d) the disposal, transfer, or storage of any Constituents of Concern by or on behalf of the Army which originated on Sunflower onto any real estate other than Sunflower; provided, however, that the Army is not responsible for Constituents of Concern disposed of in an unlawful, improper, or negligent manner by OEC or its agents, employees, contractors, or licensees pursuant to Section 9.0 of the Army Agreement.

9.5. Environmental Responsibilities. The Parties acknowledge and agree that KSPDC will not maintain ownership of Sunflower or conduct any operations, activities, disposal or remediation, at, on or adjacent to Sunflower that would result in KSPDC becoming a liable person under CERCLA, 42 U.S.C. 9607(a). KSPDC shall have no liability or responsibility for claims, liability, costs, loss, death, injury, fines and penalties, violations or any damage to the extent or arising out of: (a) any disposal, remediation or other operations or activities at Sunflower, including the transportation, treatment or disposal of Constituents of Concern, pollutants, contaminants or explosive material conducted by the Government, its agents,

employees, lessees or contractors; (b) natural resource damages; (c) the disposal, transfer, or storage of any Constituents of Concern, pollutants, contaminants or explosive material by or on behalf of the Government at Sunflower or which originated on Sunflower and migrated onto any real estate other than Sunflower; or (d) any actions or failures to take appropriate or required actions on, at, or about Sunflower prior to the last Closing.

ARTICLE 10. NO RIGHT OF RESCISSION

10.1. No Right of Rescission. There shall be no right of rescission by the Government as to Sunflower, or any portion thereof, once conveyed to KSPDC. The foregoing shall not be interpreted to limit any future exercise of the power of eminent domain by the Government.

ARTICLE 11. DEFAULT AND TERMINATION

11.1. Default by the Government. It shall be an event of default hereunder upon the occurrence of any one or more of the following events:

- a) Any of the Government's warranties or representations set forth herein are untrue or inaccurate in any material respect;
- b) The Government shall fail to meet, comply with or perform any material covenant, agreement or obligation on its part required in the manner required in this Conveyance Agreement;
- c) A breach of the Closing Instructions by the Government; or
- d) A breach of the Army Agreement by the Army;

11.2. Remedy upon Government Default. Subject to Section 11.5, if the Government defaults pursuant to Section 11.1, KSPDC and its successors and assigns may, at its option, do any combination of the following:

- a) Terminate this Agreement by written notice delivered to the Government at or prior to the First Closing;
- b) In addition to and not to the exclusion of the remedies immediately above, bring an action against the Government for damages;
- c) Collect all reasonable costs and expenses incurred in pursuing the remedies provided by law including, but not limited to, reasonable attorney's fees;
- d) Retrieve all undisbursed deposits made pursuant to Section 2.2; or
- e) Exercise such other rights in law or equity as may exist.

11.3. Default by KSPDC. It shall be an event of default hereunder upon the occurrence of any one or more of the following events:

- a) Any of KSPDC's warranties or representations set forth herein are untrue or inaccurate in any material respect;
- b) KSPDC shall fail to meet, comply with or perform any material covenant, agreement or obligation on its part required in the manner required in this Conveyance Agreement; or
- c) A breach of the Closing Instructions by KSPDC.

11.4. Remedy upon KSPDC Default. Subject to Section 11.5, if KSPDC defaults pursuant to Section 11.3, the Government may, at the Government's option, do any combination of the following:

- a) Terminate this Conveyance Agreement by written notice delivered to KSPDC at or prior to the first Closing;
- b) Retain any deposits and/or other payments made by KSPDC;
- c) Call the Promissory Note;
- d) Invoke all remedies available to the Government under the Real Estate Mortgage, the Performance and Payment Bonds, the Surety Bond, the Cost Cap Policy, the Covenant PLL Policy, and the Deferred Covenant PLL Policy;
- e) Collect all reasonable costs and expenses incurred in pursuing the remedies provided by law including, but not limited to, reasonable attorneys fees; or
- f) Exercise such other rights in law or equity as may exist;

provided that, upon the conveyance by KSPDC to a third party of KSPDC's interest in title to Sunflower or such portions of Sunflower as have then been conveyed to KSPDC pursuant to this Conveyance Agreement, the Government shall not be entitled to pursue any remedy against KSPDC, except to retain deposits or other payments made by KSPDC as provided in Subsection 11.4(b).

11.5. Right to Cure. In the event a Party hereto fails to observe or perform any of its obligations under this Conveyance Agreement, after having been provided written notice and failing to cure the default within ninety (90) days, the other Party will be entitled to exercise any and all of the remedies for breach which are provided for herein, as well as any other remedies to which the Party is entitled at law or in equity.

ARTICLE 12. BROKERAGE; CONTINGENT FEES

12.1. KSPDC Representation as to Brokerage; Contingent Fees. KSPDC warrants that it has not employed or retained any party under an agreement or understanding for a commission, percentage, brokerage, or contingent fee tied to the successful conveyance of Sunflower from the Government to KSPDC.

ARTICLE 13. FORCE MAJEURE

13.1. Force Majeure. Delays that result from causes not foreseeable and beyond KSPDC's control and which cannot be overcome by due diligence shall not be a violation of KSPDC's obligations under this Conveyance Agreement. The Government and KSPDC agree that actions by the United States Environmental Protection Agency, the SHPO, the KDHE, the Army, or any lawsuits by third parties challenging the Government's or KSPDC's right or ability to complete the transactions contemplated in this Agreement which delay the ability of a successor or assign of KSPDC to carry out the Work (as defined in the Consent Order) or KSPDC's ability to carry out obligations under this Conveyance Agreement shall each constitute a force majeure. Due diligence is defined for purposes of this Article as the measure of prudence, activity, and foresight reasonably expected from and ordinarily exercised by a reasonable and prudent person under the particular circumstances. KSPDC shall notify the Government orally as soon as possible, but no later than twenty (20) working days after KSPDC knows of any delay or anticipated delay in compliance with the requirements of this Conveyance Agreement, and shall confirm such notice in writing no later than twenty (20) working days after the oral notification of the delay. The written notice shall describe the nature of the delay, whether and why the delay was unforeseeable and beyond the control of KSPDC, the actions taken and/or that will be taken to mitigate, prevent and/or minimize further delay, and the anticipated length of the delay. KSPDC shall require that its successors or assigns exercise due diligence to avoid or minimize such delay. To the extent a delay is caused by circumstances beyond the control of KSPDC, the schedule shall be extended for a period equal to the delay resulting from such circumstances.

ARTICLE 14. NOTICES

14.1. Notices. Any notice, request, demand, instruction or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be delivered personally (including by messenger including a nationally recognized overnight delivery) or sent by United States registered or certified mail, return receipt requested, postage prepaid or by courier, postage prepaid and addressed to the parties at their respective addresses set forth below, and the same shall be effective upon receipt if delivered personally or by messenger or two business days after deposit in the mails if mailed. A party may change its address for receipt of notices by service of a notice of such change in accordance herewith.

If to Corporation: Mr. Kenneth Frahm, President
Kansas Statewide Projects Development Corporation
Suite 1000
Jayhawk Tower
Southwest Jackson
Topeka, Kansas 66603-3761

Phone: (785) 296-6747
Facsimile: (785) 296-6810

With a copy to: Ms. Rebecca E. Floyd, Esq., Secretary
Kansas Statewide Projects Development Corporation
Suite 1000
Jayhawk Tower
Southwest Jackson
Topeka, Kansas 66603-3761

Phone: (785) 296-6747
Facsimile: (785) 296-6810

With a copy to: Joel W. VanderVeen, Esq.
Kutak Rock LLP Attorneys
The Omaha Building
1650 Farnam Street
Omaha, NE 68102-2186

Phone: (402) 346-6000
Facsimile: (402) 346-1148

If to Government: Director, Real Property Disposal
GSA, 7 PR
819 Taylor Street
Fort Worth, TX 76102

Phone: (817) 779-4235
Facsimile: _____

If to Army: Headquarters
U.S. Army Munitions and Armaments Command
Attn: SOSMA-ISD
1 Rock Island Arsenal
Rock Island, IL 61299-5500

Phone: (309) 782-1421
Facsimile: (309) 782-7374

ARTICLE 15. ENTIRE AGREEMENT, AMENDMENTS AND WAIVER

15.1. Entire Agreement, Amendments and Waiver. This Conveyance Agreement contains the entire agreement and understanding of the parties in respect to the purchase and sale of Sunflower, and may not be amended, modified or discharged nor may any of its terms be waived except by an instrument in writing signed by the party to be bound thereby. The parties hereto shall not be bound by any terms, conditions, statements, warranties or representations, oral or written, not contained herein.

ARTICLE 16. SURVIVAL AND BENEFIT

16.1. Survival and Benefit. KSPDC may not transfer or assign this Conveyance Agreement and its rights and interests therein, without the written consent of the Government. All representations, warranties, agreements and obligations of the Parties shall, notwithstanding any investigation made by any party hereto, survive Closing and the same shall inure to the benefit of and be binding upon the respective successors and assigns of the rights and interests of any Party to this Conveyance Agreement. Nothing in this Conveyance Agreement otherwise shall be construed as creating any rights of enforcement by any person or entity that is not a party hereto, nor any rights, interest, or third party beneficiary status for any entity or person other than the Parties hereto.

ARTICLE 17. INTERPRETATION

17.1. The headings and captions herein are inserted for convenient reference only and the same shall not limit or construe the paragraphs or sections to which they apply or otherwise affect the interpretation hereof.

17.2. The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms shall refer to this Agreement, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of this Agreement.

17.3. Words of the masculine, feminine or neuter gender shall mean and include the correlative words of other genders, and words importing the singular number shall mean and include the plural number and vice versa.

17.4. Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons.

17.5. The terms “include,” “including” and similar terms shall be construed as if followed by the phrase “without being limited to.”

17.6. This Conveyance Agreement and any document or instrument executed pursuant hereto may be executed in any number of counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

17.7. Whenever under the terms of this Conveyance Agreement the time for performance of a covenant or condition falls upon a Saturday, Sunday or holiday observed by the performing party, such time for performance shall be extended to the next business day. Otherwise, all references herein to “days” shall mean calendar days.

17.8. This Conveyance Agreement shall be governed by and construed in accordance with Federal law and the laws of the State of Kansas, as applicable.

17.9. Time is of the essence of this Conveyance Agreement.

17.10. If any term or provision of this Conveyance Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Conveyance Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Conveyance Agreement shall be valid and be enforced to the fullest extent permitted by applicable law.

17.11. Except as used in Article 16, the words “successors and assigns” or “successors or assigns” or such words in the singular, when used in this Conveyance Agreement with respect to KSPDC, are intended to refer to any successors and/or assigns of KSPDC’s interest in all or a portion of Sunflower (whether such interest is obtained by sale, conveyance, transfer, assignment, deed, gift or any other voluntary act of KSPDC) and not to any successors and/or assigns of KSPDC’s interest in this Conveyance Agreement.

17.12. No provision of this Conveyance Agreement is intended by the Parties to affect the interpretation of the Consent Order in any manner.

17.13. Nothing set forth in this Conveyance Agreement shall be construed to have waived any right provided under statutory law.

ARTICLE 18. OFFICIALS NOT TO BENEFIT

18.1. Officials Not to Benefit. KSPDC acknowledges that no member of, or delegate to the Congress, or resident commissioner, shall be permitted to share any part of the contract of sale, or to receive any benefit that may arise therefrom. This provision shall not be construed to extend to the contract of sale if made with a corporation for its general benefit.

ARTICLE 19. NON-DISCRIMINATION

19.1. Non-Discrimination. KSPDC covenants for itself, its successors and assigns and every successor in interest to Sunflower hereby conveyed, or any part thereof, that the said Corporation and such successors and assigns shall not discriminate upon the basis of race, color, sex, religion, or national origin in the use, occupancy, sale or lease of the Property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of Sunflower hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

ARTICLE 20. FURTHER ASSURANCES

20.1. Further Assurances. The Government shall, upon the reasonable request of KSPDC, execute, cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in order to carry out the intent and purpose of this Conveyance Agreement.

ARTICLE 21. TERMINATION

21.1. Termination. This Conveyance Agreement shall terminate: (1) upon conveyance of all of Sunflower to KSPDC as provided herein; (2) at the option of the GSA, upon: (a) dissolution of KSPDC; (b) loss of KSPDC's status as an instrumentality of the State of Kansas under state law; (c) KSPDC's inability or refusal to take title to Sunflower or any portion thereof as required herein; or (d) KSPDC's default under this Conveyance Agreement after written notification of noncompliance and a failure to cure the default within ninety (90) days; or (3) at the option of KSPDC, upon the Government's default under this Conveyance Agreement after written notification of noncompliance and a failure to cure the default within ninety (90) days.

21.2. Effects of Termination. The termination of this Conveyance Agreement shall have no effect on: (a) the continuing obligations of the Parties as provided for in the Deeds, the Promissory Note, and the Real Estate Mortgage; or (b) the Covenant PLL Policy, the Cost Cap Policy, the Deferred Covenant PLL Policy, the Remediation Contract, the Surety Bond, or the Performance and Payment Bonds. Articles 7, 8, 9, and 22 of this Conveyance Agreement shall survive any termination of this Conveyance Agreement.

21.3. Federal Law. All disputes arising under or relating to this Conveyance Agreement shall be resolved pursuant to federal law and under the jurisdiction of the federal courts.

21.4. Continued Performance During Dispute Proceedings. KSPDC and the Government shall proceed diligently with the performance of this Conveyance Agreement, pending final resolution of any dispute for relief, claim, appeal or action arising under this Conveyance Agreement.

ARTICLE 22. RESTRICTIONS

22.1. Government Restrictions. The Government's obligation to pay or reimburse any money under this Agreement is subject to the availability of appropriated funds, and nothing in this Conveyance Agreement shall be interpreted to require obligations or payments by the Government in violation of the Anti-Deficiency Act, Public Law 97-258, as amended.

22.2. KSPDC Restrictions.

a) Under no circumstances shall KSPDC, the Kansas Development Finance Authority, the State of Kansas or its political subdivisions or any unit of local government assume responsibility or otherwise be responsible for any environmental remediation which may be required to be performed on Sunflower.

b) Upon the conveyance by KSPDC to a third party of KSPDC's interest in title to Sunflower or such portions of Sunflower as have then been conveyed to KSPDC pursuant to this Conveyance Agreement, the Government shall have no recourse against KSPDC under this Conveyance Agreement. Any claim for damages for breach of this Conveyance Agreement, any claim for liability of any kind arising under this

Conveyance Agreement and any proceeding for the enforcement of this Conveyance Agreement, whether prior to or following any default by KSPDC or its successors or assigns, shall be made by the Government only against the property conveyed hereunder or against the successors or assigns of KSPDC's interest in title to such property.

c) This section is intended to limit liability of KSPDC to the Government, but is not intended to limit any liability or obligation to the Government of any successor or assign of KSPDC's interest in title to such property.

[SIGNATURE PAGES FOLLOW]

6/8/00

In Testimony Whereof, witness the signature of the Government, acting by and through the General Services Administration, under and pursuant to the authority provided in 40 U.S.C. Section 484(e)(3)(H) and the Federal Property and Administrative Services Act of 1949, as amended, this ____ day of _____, 2000.

UNITED STATES OF AMERICA

By: _____

STATE OF _____)
)
 COUNTY OF _____) ss.

The foregoing Memorandum of Agreement was acknowledged before me this ____ day of _____, 2000, by _____ of the General Services Administration, on behalf of the United States of America.

My commission expires _____.

 Notary Public, _____

6/8/00

In Testimony Whereof, witness the signature of the Kansas Statewide Projects Development Corporation (“Corporation”), a corporation organized and existing under the laws of the State of Kansas under Kansas Statutes Annotated, Section 74-8904(v), as amended, this ____ day of _____, 2000.

KANSAS STATEWIDE PROJECTS
DEVELOPMENT CORPORATION

By: _____
Kenneth Frahm, President

STATE OF KANSAS)
COUNTY OF SHAWNEE) ss.

The foregoing Memorandum of Agreement was acknowledged before me this ____ day of _____, 2000, by _____, on behalf of the Kansas Statewide Projects Development Corporation.

WITNESS my hand and official seal.

My commission expires _____

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